

**In the United States**  
**CIRCUIT COURT OF APPEALS**  
**for the Ninth Circuit**

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UNIVERSAL INSURANCE COMPANY, a  
corporation,

*Appellant,*

vs.

FRANCES M. STEINBACH, also known as  
FRANCIS M. STEINBACH, and CARO-  
LYN S. STEINBACH,

*Appellees.*

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**APPELLANT'S BRIEF ON**  
**SUPPLEMENTAL FINDINGS OF FACT**

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Upon Appeal from the District Court of the United  
States for the District of Oregon.

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## TOPICAL INDEX

	Page
Statement of the Case.....	1
Assignments of Error.....	7
Index of Main Points of Law.....	8
The Family Conference.....	9
Supplemental Proceedings in the District Court.....	17
Conclusion .....	23
Appendix .....	24



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**STATEMENT OF THE CASE**

There is no dispute or contradiction in the testimony relating to the question of the ownership of the dredge Wishram and insurable interest. The problem presented to the District Court of Oregon by the Circuit Court of Appeals in the Order of May 17, 1948, was to draft a statement of ultimate fact correctly setting forth the meaning of the evidentiary details.

The complaint alleged:

"That during the times herein mentioned the plaintiffs were the owners of a suction dredge named 'WISHRAM'."

The amended answer denied the above allegation and alleged affirmatively the ultimate facts on insurable interest as shown by the testimony. At the conclusion of the trial the attorneys for the plaintiffs (appellees here) exhibited their lack of confidence in the evidence relating to the above allegation of ownership by tendering to the trial court as a Finding of Fact:

"That the plaintiffs are and were at all times herein mentioned proper parties to insure a certain suction dredge named the 'Wishram'."

The trial court exhibited a like want of confidence in this testimony by signing the above finding. In its brief and at the oral argument appellant pointed out that this finding is not a Finding of Fact but is a conclusion. The case was argued May 14, 1948, and on May 17 the Circuit Court of Appeals made an order pointing out that the District Court had made no finding of fact on the issue of ownership, and providing:

"Therefore, the trial court is hereby directed to make and file findings as to (1) whether, during the times mentioned in the complaint, plaintiffs or either of them owned the dredge Wishram or any interest therein; (2) the nature, character and extent of such ownership or interest, if any; and (3) how, when and from whom such ownership or interest, if any, was acquired."

On May 24, 1948, pursuant to the above order a short hearing was had before the district court. The writer of this brief was then engaged in a trial, and

the District Court directed a further hearing at a later date. This took place June 10, 1948. (Supplemental Transcript) At the second hearing the appellant filed a typewritten brief and argued the case at some length.

Between May 24 and June 10 the District Court prepared proposed supplemental findings and sent them to counsel. The attorney for appellees filled in the engineer's letter. A day or two after the conclusion of the June 10 hearing the District Court signed and filed these findings. (Supplemental Transcript 19-20)

The substance of the trial court's supplemental findings is as follows:

"Prior to the purchase of the Dredge, the Steinbachs and their wives conferred about the advisability of making the purchase and operating the Dredge, and it was decided to put the Dredge in the wives' names, because (1) the Steinbach brothers had an unadjusted wartime contract in their own business that was troubling them (2) they had an agreement with Captain Corgan that he and his son should have a third interest in the Dredge, after the cost of buying and moving it had been paid out of the profits the Dredge was expected to make.

"The ownership of the Dredge by Francis and Carolyn Steinbach was complete, subject to working out of the plans aforesaid, and this was fully understood by Captain Corgan, as well as the Steinbach brothers and their wives."

Let us look at the supplemental findings in reference to the requirements of the Circuit Court of Appeals.

The first question of this court is whether plaintiffs or either of them owned the dredge or had any interest therein. The answer to this question is not direct but, taken by their four corners, the supplemental findings are to the effect that the ladies owned the dredge.

There is no finding that they had any interest in the dredge other than ownership. No form of insurable interest is predicated upon the loan made by Frances Steinbach to the Steinbach Iron Works. No claim is made for the theory advanced by Mr. and Mrs. Steinbach that "what's mine is hers", which if followed literally would lead to ownership, not by the ladies, but in common by the men and their wives. There is no claim of any equity lien, mortgage, advance or other form of insurable interest.

The second question calls for a statement of the nature, character and extent of the ownership. The answer is to be found in the last paragraph of the supplemental findings:

"The ownership of the Dredge by Francis and Carolyn Steinbach was complete, subject to working out of the plans aforesaid, and this was fully understood by Captain Corgan, as well as the Steinbach brothers and their wives."

We take it that the work "complete" means exclusive. The ownership by the ladies is described to be temporary and indeterminate in length. It is subject to the working out of the "plans aforesaid." These plans amounted to future intentions,—namely, the adjustment of the wartime tugboat claims, and the con-



tract between the Steinbach brothers and Captain Corgan whereby each was to have one-third interest in the dredge.

This finding does not recite whether the women held the dredge in common, jointly, or otherwise. (Appellant's Main Brief 45)

The third question asked by this court is how, when and from whom the appellees' ownership was acquired. The answer is as follows:

"Prior to the purchase of the Dredge, the Steinbachs and their wives conferred about the advisability of making the purchase and operating the Dredge, and it was decided to put the Dredge in the wives' names, . . ."

The District Court also adds in the last paragraph:

"this was fully understood by Captain Corgan, . . ."

There was no evidence that Captain Corgan knew anything about the family conference, as we will point out later. The District Court made no finding that any consideration or value passed from either of the ladies; that any written conveyance was made by Captain Corgan or either of the husbands; that the husbands had any legal title to the dredge at the time of the family conference; that the ladies or either of them took delivery of the dredge or ever had possession thereof; that the ladies became either trustees or trustors of said dredge on any trust expressed or implied; that the ladies or either of them ever appointed Captain Corgan to act as their agent, or that Captain Corgan so acted

in buying the dredge; or that either John L Steinbach, David E. Steinbach or Captain Hugh Corgan ever disclaimed interest in the dredge prior to the trial.

The sole basis of the "complete ownership" claimed for the ladies is that at the family conference "it was decided to put the dredge in the wives' names."

The District Court has included in his supplemental findings some matters not requested by the order of the Circuit Court of Appeals—namely, the reasons or motives which actuated the four members of the Steinbach family, in family conference, to "put the dredge in the wives' names". The court finds these reasons to be (1) the unadjusted wartime contract and (2) the contract between the two Steinbach men and Captain Corgan for the future formation of a corporation to operate the dredge.

We pause to mention that the motives stated by the District Court are not fully correct. The Steinbachs all testified that the reason for the insurance in the names of the wives was the financial embarrassment of the Steinbach Iron Works. That in turn was consequent in part upon the unadjusted wartime contract.

As to the second motive, there was no provision in the contract between the two Steinbachs and Captain Corgan for the future formation of a corporation that the ladies should hold the dredge in the interim. By leaving the title to the dredge and the possession and control of the same in Captain Corgan, and by placing the insurance in the names of their wives, the Stein-

bach men made it appear to their creditors in Tillamook that they themselves had nothing to do with the dredge.

The Steinbach men and Captain Corgan caused to be prepared and executed a very fanciful document known in the record as Exhibit 15, but not printed. This is a sort of a Massachusetts Trust in which they all became trustees. Perhaps this had to do with the plan to create a corporation for the operation of the dredge. Both sides appear to agree tacitly that this Massachusetts Trust was inoperable or at least inoperative.

## **ASSIGNMENTS OF ERROR**

The Court erred in its supplemental Findings of Fact in finding:

1. That Frances Steinbach and Carolyn Steinbach owned the dredge Wishram.

2. That the ownership of the dredge by Frances Steinbach and Carolyn Steinbach was complete subject to the working out of the unadjusted wartime contract of Steinbach Iron Works and the contract between the Steinbach brothers and Captain Hugh Corgan whereby each of the three was to have substantially a one-third interest in the dredge.

3. That the dredge was transferred to the ladies by and in the course of a family conference between the two Steinbach men and their wives wherein it was de-

cided to put the dredge in the wives' names.

4. That Captain Corgan understood that it had been decided in a conference in the Steinbach family to put the dredge in the wives' names.

## INDEX OF MAIN POINTS OF LAW

1. Title to the dredge could be transferred only in writing. This title, the naked legal title at least, never left Captain Corgan. (Appellant's Main Brief 27; Appellant's Reply Brief 2, 3)

2. Neither a husband or a wife has any title to or interest in the other's personal property. (Appellant's Main Brief 43)

3. Appellees had no legally enforceable rights in or to the dredge. (Appellant's Reply Brief 5)

4. A policy issued to one who has no insurable interest is void. (Appellant's Main Brief 31-33)

5. The appellees are not the real parties in interest. The real parties in interest are the Steinbach men and Captain Corgan. (Appellant's Main Brief 50)

6. The appellant issued the policy to the ladies because of misrepresentation and failure to disclose their true relationship to the dredge. (Appellant's Main Brief 17, 23, 40 and 53)

7. Even if the appellant had known the facts about ownership when it issued the policy the policy would

still be void by statutory definition. (Appellant's Reply Brief 16)

8. If the appellees are deemed the owners and to have an insurable interest by reason of the family conference then the appellant has been misled into issuing a policy without reserving to itself the benefits of salvage covering a property in respect to which salvage is an inherent possibility. (Appellant's Main Brief 41-43; Appellant's Reply Brief 9-12)

## THE FAMILY CONFERENCE

The District Court has held that the ladies owned the dredge and has based that ownership entirely on the conference between the four members of the Steinbach family and upon the added finding that Captain Corgan "fully understood" the same. We wish now to discuss the case from the point of view of the family conference and the extent of Captain Corgan's knowledge of it as bearing upon title and ownership of the dredge.

That the District Court also found the motives for holding the family conference, and found them not quite correctly, is not of present importance. The question is not *why* the Steinbachs held the conference, but whether the family conference could do what it is claimed for it, namely, transfer the title and ownership of the dredge to the ladies.

*The record should contain no testimony whatever of the family conference.* All of this testimony is in-

competent. Appellant duly objected to all of this evidence and the objection was overruled and became a continuing objection during the trial. Upon this appeal the point was reserved as the first assignment of error. Appellant has argued the inadmissability of this testimony to this court. (Appellant's Main Brief 20-22; 27-30. Appellant's Reply Brief 2-6)

But the family conference is in the record in spite of Appellant's objections and we will therefore discuss it, not waiving our exceptions.

First let us dispose of the asserted knowledge by Captain Corgan of the family conference. The District Court found "this was fully understood by Captain Corgan,"

John L. Steinbach testified (103; Appellant's Main Brief 22) that Captain Corgan did not attend the family conference and that the agreement by which it was claimed the ladies owned the dredge was entirely between the four members of the Steinbach family and without any writing. There is no testimony to contradict this. Neither Captain Corgan nor his son nor any of the four Steinbachs testified that any of the Steinbach told Captain Corgan, either before or after the family conference, anything about it. There is no testimony tending to refute the idea that Captain Corgan never heard of the family conference until Frances Steinbach first testified concerning it in Tillamook on June 17, 1946. There is no testimony that Captain Corgan knew at the time of the purchase of the dredge that Steinbach Iron Works was



in financial difficulties or that they owed money to the president of The First National Bank or to anybody else, nor is there any evidence that Captain Corgan then knew that Steinbach Iron Works had on its hands any uncompleted settlement with the government, or even that the Steinbachs had done wartime ship building.

Captain Corgan did know and participated in the contract with the two Steinbach men to the effect that the three would form a corporation to operate the dredge. Captain Corgan testified about this contract (Transcript 120). John L. Steinbach testified concerning the contract and also wrote a letter confirming it. (Appellant's Main Brief 9) This letter appears in full in the record. (Transcript 225) It was written contemporaneously with the purchase of the dredge,—after the first letter from the Government Engineers accepting Captain Corgan's offer, (Transcript 288) and before their second letter, which Captain Corgan described as a bill of sale "In the form of a letter addressed to me." (Appellant's Main Brief 10, and Reply Brief, 20)

If the ladies were to hold the title to the dredge from the time of its purchase until it could be transferred to a future corporation to be formed in accordance with the contract between the Steinbachs and Captain Corgan, then Captain Corgan certainly ought to know about it. *It is quite significant however that neither J. L. Steinbach's letter confirming*

*the contract nor any of the testimony concerning it makes any mention of the ladies.*

So much for Captain Corgan's understanding of the internal arrangements of the Steinbach family. There is no testimony that he had any such understanding whatever.

Let us now trace the family conference testimony from beginning to end and see what it consists of. The supplemental findings require such a tracing, and give to the Tillamook depositions of June 17, 1946 (Exhibit 7) an importance which they did not quite have in this appeal prior to the supplemental findings. These depositions together with the exhibits thereto were marked at pre-trial as defendant's Exhibit 7. (Transcript 77) At the trial, after the opening statements had been made, Mr. Phillips of counsel for plaintiffs offered all of the pre-trial exhibits in evidence. The proceedings at that point were as follows: (Transcript 75)

"Mr. Phillips: I might suggest to your Honor that there has been a pre-trial and all of the exhibits are already in. I suggest that we offer them at one time and *that either party may use them as they see fit*, if there is no objection. (Emphasis ours)

Mr. Snow: No objection.

The Court: During the recess, the Court Reporter will give those additional exhibits numbers to follow the numbers already issued, and all exhibits will be considered offered and admitted as trial exhibits, taking the same numbers as the pre-trial exhibits, subject to any objections that



might have been stated at the pre-trial and any further objections that may be stated at any time in this trial.

Mr. Snow: I wish to reserve for the record objection to certain testimony adduced on cross examination of these witnesses, which would tend to show parol transfer of the Wishram to the ladies, and I wish to reserve in the record an objection to any and all testimony tending to show transfer of the dredge in any other manner than as required by the statutes of Oregon.

The Court: It is so understood.

Mr. Phillips: As I understand, the exhibits are all in evidence and will be marked as numbered in the pre-trial.

The Court: Yes."

The foregoing quotations are offered because the District Court at the time of the supplemental hearing on June 10, 1948, said that the depositions might be considered in evidence only for the purpose of use at the trial to read into the record admissions against interest, and for impeachment. (Supplemental Proceedings 25-28). No such reservation was made however when the exhibits were offered and we think the depositions of the Appellees at least are in evidence for all purposes. (Federal Rules of Civil Procedure, Rule 26 (d) (2) ) In fact where a deposition taken in the early stages of the case is admitted in evidence, an attorney might be somewhat lulled into security by that fact, in regard to the full use of the deposition for impeachment purposes.

We have printed as an appendix to this brief from Exhibit 7 the cross examination of Frances Steinbach

and the full testimony of Carolyn Steinbach, who did not testify at the trial. John L. Steinbach's testimony in his deposition did not vary from that at the trial.

The earliest mention of the family conference occurred at the cross examination of Frances Steinbach conducted by Mr. Winslow, her own counsel, at the Tillamook depositions of June 17, 1946. These depositions commenced in the morning and continued until 12:20 p.m. when a recess was taken until 1:30 p.m. (Exhibit 7, 70) Frances Steinbach was examined in the morning. At the conclusion of her direct examination she was cross examined by Mr. Winslow. He led her freely, thus weakening her testimony somewhat from her point of view. Under his lead she acquiesced that there had been a family conference about the dredge and continued (Exhibit 7, 43; this Brief 24):

"Q. Just tell how that was arranged, who was to own the dredge and how that came about?

A. That we were to own some of it—

Q. Tell who was going to own the dredge, how it was handled and so on, and then after you give your answer, just explain what led up to it."

MR. WINSLOW: Q. Just go ahead and tell us who among you four it was agreed was to own the dredge, and then go ahead and tell the reason why.

A. We were all to own it; we were all to own it together, and we were going to keep it out of the shop, because the shop was sort of involved in these boats that they had been building."

The testimony that "we were to own some of it"

and "we were all to own it together" does not support the idea that the two ladies were to own the dredge.

Carolyn Steinbach also testified in the morning. On her direct examination (Exhibit 7, 49 this Brief 29) she testified that she contributed no money toward the purchase of the dredge, received no papers or documents, no promissory notes or mortgage nor shares of stock, that she took part in family talks, that she had no financial interest in the dredge and no ownership of the same, "just through my husband", that when the check for return premium came she endorsed it to Frances Steinbach because of the loan the latter had made to the two men; that she, Carolyn Steinbach, did not lend any money to anybody. On cross examination, she said "yes" to Mr. Winslow's statement that as between the four Steinbachs she knew the dredge was being purchased in the names of the ladies and that the insurance was being taken out in the names of the ladies. (Exhibit 7, 49; This Brief 31)

In our main Brief we quoted the substance of the testimony at the trial concerning the family conference (Appellant's Main Brief 20-22)

Prior to the taking of the Tillamook depositions appellant took the deposition of Captain Corgan at Portland on May 29, 1946. This was some six months after the loss and two months after commencement of the suit yet even then Captain Corgan did not claim that the ladies owned the dredge, but spoke of the insurance policy as security for a loan. (Appellant's Reply Brief 4, 21)

The conclusions which we draw from the above testimony is that even if we consider the family conference testimony to be competent and properly in the record, which we do not, the whole testimony concerning that conference fails to support the idea that the ladies were to own the dredge. Also it is quite interesting to note how that idea of ownership through the family conference crystalized and developed as time went on.

Furthermore, we need hardly remind this Court that there is no testimony in connection with the family conference or elsewhere in the record that the ladies or either of them paid any consideration whatever for the dredge. Lack of written transfer by Captain Corgan, lack of consideration, lack of delivery or possession of the dredge, lack even of knowledge by Captain Corgan of the family conference,—all of these things denied the two women any rights in the dredge which they could have enforced in a court of law or equity.

As a matter of law the ladies could have acquired no insurable interest or title in the dredge based upon the family conference even if we consider the testimony of the family conference competent and properly in the record.

## SUPPLEMENTAL PROCEEDINGS IN THE DISTRICT COURT

It is of interest to follow the course of the hearings before the District Court, especially that of June 10, 1948, because the remarks of the Court fortify the supplemental findings as by an opinion. This transcript is now before the Circuit Court of Appeals.

At pages 32 and 33 of the Supplemental Transcript we discussed the letter from J. L. Steinbach to Captain Corgan (Transcript 225) in which the plans for future business of the dredge was outlined, and pointed out that the women were not mentioned in the letter. The Court (Supplemental Transcript 33) abruptly brought the argument around to the conference in Mr. Knapp's office between J. L. Steinbach, Captain Corgan and Mr. Knapp leading to the issuance of the policy. (Appellant's main Brief 17, 23, 40 and 53)

It seemed to us that the District Court entertained the belief that the appellant might waive the requirement of insurable interest. Consequently we denied that the insurance company had such a right and on page 34 stated the facts of the Michigan case, *Agricultural Insurance Co vs. Montague*, 38 Mich 548 (Reply Brief 16). Before we could read from the opinion, the District Court interrupted at the top of page 35 indicating by inference that he did not agree with that authority.

At the bottom of page 35 the Court questioned the statement of the writer that Mr. Knapp testified that he was told by Mr. Steinbach and Captain Corgan that the ladies had purchased the dredge with the money of the ladies. (Appellant's Main Brief 17) On page 36, the Court suggested that Mr. Knapp may have referred to the money of the men.

Mr. Knapp clearly referred to the money of the women. In answer to the previous question, he testified that neither Mr. Steinbach or Captain Corgan told him that the Steinbach Iron Works had paid the money for the dredge. He would not in one breath say that he was not told that the men furnished the money for the dredge, and in the next breath say he was told that it was purchased with the men's money. (Transcript 198)

At page 39 of the Supplemental Transcript we got around to the argument that if the court held the women to be the owners of the dredge the appellant would be placed in the position of attempting to contract away its benefit of salvage in a case where there was possibility of salvage, contrary to the statute Section 101-1119, (Appellant's Main Brief 73). We argued that the appellant could not recover from the Bergs as owners of the fishboat which attempted the towage, in subrogation to the right of the appellees, because it could not be shown in an independent suit against the Bergs that the appellees owned the dredge or suffered any damage by reason of the loss of the dredge. The Court stated that he would hold the



same as regards ownership in the secondary case against the Bergs as in the primary case. We answered that it would be impossible to show that the appellees suffered any damage by the loss of the dredge. The Court then pointed out that Captain Corgan suffered nothing with the loss of the dredge. We agreed with this proposition, probably too readily. It may be that Captain Corgan would have lost the difference between the amount the Steinbach men had in the dredge,—\$9,446.26 (Transcript 222; Appellant's main Brief 25) and the amount of the recovery \$11,437.50, or perhaps one third of that difference.

At this point the minds of the Court and of arguing counsel were brought pretty closely together on the ultimate financial side of the case. Captain Corgan who held the paper title to and possession of the dredge, had no money in it. The dredge was insured in the names of the ladies, who had nothing in it. The Steinbach men however had in the dredge \$5500 of purchase price, some insurance premiums, wages to Captain Corgan and his son, and repairs, to the full total of \$9446.26. (Appellant's Main Brief 24-26) The Steinbach men however had no conveyance in their names, and never took delivery or had possession of the dredge.

Mr. Steinbach and Captain Corgan, by misleading Mr. Knapp and failing to tell him the whole story, had secured issuance of a policy in the name of the women. The creditors of the Steinbach Iron Works were hindered and delayed because, while the Stein-

bach Iron Works paid out all the money, title and possession of the dredge were in Captain Corgan, and the policy in the names of the ladies. There was no doubt that recovery in this suit would go primarily to the Steinbach men. John L. Steinbach admitted this in testifying as to the amount of insurance to be placed on the dredge, when he said (Appellant's main Brief 20):

"I was interested in just the insurance being enough to cover, to protect us for the amount that we had paid for it."

At this stage of the argument, at the bottom of page 42 of the Supplemental Transcript the Court suddenly announced what we believe to be his entire philosophy of the case both as to the facts and as to the law. We quote:

"THE COURT: Okeh. I think when a man pays his money for insurance, if he wants title to his property in his wife, even though he has paid every dollar of it and his wife has paid nothing whatsoever, he is entitled to collect. That is what I think, and that is what I think the law is."

This, to us, is a naked statement of the Court's views, stripped of all trial strategy and reduced to essential facts and legal beliefs.

On the factual side there is no pretense here that the ladies had any rights of ownership in the dredge. The Court recognized that the Steinbach men paid all the money and considered them to be the sub-



stantial owners of the dredge, and the real assureds under the policy.

On the legal side there is an expression of the Court's conviction that a man owning property can cause a policy of insurance on the same to issue in the name of his wife, and that upon loss the wife can recover, with the expectation that she will pay the recovery over to her husband.

We think we have correctly analyzed the District Court's point of view, and we say respectfully but firmly that his opinion on the law disregards the Oregon statutes and all the law we have found in the books.

If the Court's statement is the law let us look for a moment to see what it leads to.

If a man can insure his own vessel in his wife's name the prohibition against wagering policies goes overboard. The District Court has put his own concept of what is right above the governing statute. Wagering policies, where the insured had no insurable interest, were entirely lawful prior to the year 1751, but they have been condemned for the last 200 years. Surely, if wagering policies were beneficial in the promotion and encouragement of navigation and commerce and the legitimate conduct of the same, the old statute outlawing them would have been repealed long ago, and would not have been written into the English law of 1906 or Oregon law of 1921.

The District Court's view of the law deprives the insurance company of its possibility of salvage. Where

a vessel owned by a man is insured in the name of his wife, she cannot surrender the salvage where a total loss is claimed, or give in subrogation an effective right of action against a wrongdoer who may have caused the loss; nor can the husband be compelled to surrender, nor can the company sue in his right or name. It is unlawful for an insurance company to write, or for an assured to receive, an insurance policy without benefit of salvage to the company, where salvage is possible. This statute is recognized by assureds and insurers alike. Premium rates and re-insurance covers and treaties are based in part upon the possibility of salvage which inheres in the various risks.

The District Court holds not only that a man can insure his own vessel in his wife's name, but that he is under no duty to tell the agent of the company the truth about the ownership of the vessel. His statement to the company that his wife owns the vessel is ignored as an immaterial misrepresentation. Thus the statute condemning misrepresentation to insurers and requiring full disclosure to them is to be disregarded. Insurance companies are to be required at their peril to investigate titles before they insure. They are to be at the mercy of falsifiers. Again the District Court has placed his own views above the statute.

Under the Court's ruling a man can, in order to defraud his creditors, place the naked legal title to and the possession of his vessel in a friend, and the

insurance in his wife, and thus make it appear that he is not interested in the vessel. It is perfectly proper, according to the District Court, for him to represent to the insurance company that the wife owns the vessel, without disclosing the true interests of the friend, or the wife, or himself.

Again, in allowing a wife to recover on an insurance policy covering property of the husband, the expectation is of course that she will deliver over the recovery to the husband. Such a result derogates from the rule requiring an action to be prosecuted in the name of the real party in interest.

These considerations will, we think, be a powerful deterrent to acceptance by this Court of the District Court's theory.

## CONCLUSION

In conclusion we ask the Circuit Court of Appeals to hold that appellees had no insurable interest in the dredge and that the policy sued on is, therefore, void.

Respectfully submitted,

MACCORMAC SNOW,

Attorney for Appellant

**APPENDIX**

Cross examination of Frances Steinbach and complete testimony of Carolyn Steinbach. Parts of Exhibit 7, depositions taken at Tillamook, Oregon, June 17, 1946. Figures in brackets denote pages of Exhibit.

**FRANCES STEINBACH, CROSS EXAMINATION**  
**[42] BY MR. WINSLOW:**

Q. At the time of or just prior to the purchase of this dredge, was it talked over among your family, I mean Mr. Steinbach, John, your husband, and Dave and his wife? Did you all know about these negotiations for the purchase of the dredge?

A. As far as I know, we all did.

Q. Did you talk it over?

[43] A. Yes, surely, we talked it over.

Q. I want you just to testify now as to what was the talk there, as to who was going to own the dredge and the reasons why it was handled in just the way it was handled.

A. Yes.

Q. Just tell how that was arranged, who was to own the dredge and how that came about?

A. That we were to own some of it—

Q. Tell who was going to own the dredge, how it was handled and so on, and then after you give your answer just explain what led up to it.

MR. SNOW: I think I will interpose an objection to that. That would be hearsay. I will just note an objection on the ground of hearsay.

MR. WINSLOW: Yes. Let me withdraw that question for the time being.

Q. Did anybody else contribute anything towards the purchase of the dredge besides the four Steinbachs, Dave and his wife, you and John? Did anybody else contribute anything towards the purchase of the dredge?

A. Not that I know of.

Q. Did you folks contribute all of it, then?

A. Yes.

Q. What was the agreement between you four about paying for the dredge, as to who was to own the dredge? Just testify as [44] to what was discussed as to the reasons why you were handling it the way you did.

MR. SNOW: Was that agreement reduced to writing?

A. No, it was not.

MR. SNOW: Just in a family conference?

A. Yes, just family affairs.

MR. SNOW: I desire to note an objection to that on the record.

MR. WINSLOW: Q. Just go ahead and tell us who among you four it was agreed was to own the dredge, and then go ahead and tell the reason why.

A. We were all to own it; we were all to own it together, and we were going to keep it out of the shop, because the shop was sort of involved in these boats that they had been building.

Q. What boats?

A. Boats for the Maritime Commission.

Q. This record does not show anything about the boats. Just go ahead and explain that.

A. They had not received their money yet, so we wanted to have something when the boys came back from service they could go into business and have something that we felt they could be sure of.

Q. What was the discussion as to why you wanted to keep it out of the shop?

MR. SNOW: I understand I have a continuing objection to all [45] of this line of testimony?

MR. WINSLOW: All right.

MR. SNOW: On the same ground; it is hearsay, incompetent, irrelevant and immaterial.

MR. WINSLOW: Q. What shop?

A. The Steinbach Iron Works shop.

Q. What was the discussion as to why you wanted to keep it out of the shop?

A. Because the shop owed quite a lot of money to the First National Bank and owed bills for things they had bought for these boats. They were pretty heavily involved, and we wanted to get something that we felt the boys could have.

Q. You wanted to keep the dredge out of the shop, then?

A. Yes, wanted to keep the dredge out of the shop.

Q. You spoke about the boys. You have some boys in the service?

A. Yes, Dave has two boys in the service and we had one boy in the service.



Q. What was the discussion among you Steinbachs that you have mentioned as to why you wanted to have something for the boys?

A. Well, when they came home from the service. We knew they did not care for the shop so much, and we thought maybe they would like the dredge business better. They always seemed to like boats and things like that, and we thought they would like that better.

[46] Q. As a matter of fact, they did not like the shop at all, did they?

A. No.

Q. John and Dave were partners conducting the shop, the Steinbach Iron Works?

A. Yes.

Q. Then, you say it was for that reason and for the reason you have given, about them being somewhat involved in building these boats, that you wanted to keep the dredge out of the shop business?

A. Yes, we wanted it entirely separated.

Q. The insurance was taken out in the name of you ladies, was it?

MR. SNOW: The same objection.

A. Because—shall I go on?

MR. WINSLOW: Q. Yes, surely.

A. Because we wanted to keep them separated from the shop.

Q. Then, was the dredge considered in the names of you ladies to keep it out of the shop?

A. Yes, it was.

Q. That was the understanding between all four of you?

A. Yes.

Q. It was understood between all four of you all the time that the dredge was in the names of you ladies?

[A] A. Yes, sir.

Q. So, then, it is a fact, as far as you four were concerned, you four had contributed all of the money for the purchase of the dredge, that title to the dredge was to be in Mrs. Dave Steinbach and yourself and the insurance was taken out in your names on that basis?

MR. SNOW: I object to that as leading.

MR. WINSLOW: Leading?

MR. SNOW: Let her tell.

MR. WINSLOW: Don't I have a right to cross examine?

MR. SNOW: There has been nothing brought out about that. She is your own witness.

MR. WINSLOW: No, Mr. Snow. She is your witness. You are taking her deposition.

MR. SNOW: I just want to note an objection in the record. Let her answer, subject to the objection.

(Question read.)

A. Yes.

MR. WINSLOW: Q. That was all understood between you four?

A. Yes.

Q. There may be one or two other things. This promissory note we are talking about here, you did



not give me that, did you?

A. I imagine Dave or John possibly gave it to you with some other papers.

MR. WINSLOW: That will be all.

CAROLYN STEINBACH, DIRECT EXAMINATION  
[49] BY MR. SNOW:

Q. You are Carolyn S. Steinbach, are you?

A. Yes.

Q. One of the plaintiffs in this case?

A. Yes.

Q. You have recently been ill, have you?

A. Yes, I have.

Q. We will make this just as brief as possible. Did you contribute any money towards the purchase of the dredge?

A. No, I didn't.

Q. Did you receive any papers or documents having to do with the dredge?

A. No, sir.

Q. No promissory note was given to you?

A. No.

Q. Nor mortgage?

A. No.

Q. No shares of stock or other evidence of interest in the Coast Dredging & Construction, Ltd.?

[50] A. No.

Q. You participated, did you, in the family talks about the dredge?

A. Yes, sir.

Q. You are the wife of Mr. Dave Steinbach?

A. Yes.

Q. Outside of that, do you know anything more about this aside from the talks you have had from time to time?

A. No, sir.

Q. You did not have any financial interest in it at all, did you?

A. No, I didn't.

Q. You did not have any ownership of the dredge, yourself, did you?

A. Just through my husband.

Q. Just through the talks that you had in the family?

A. Yes.

Q. When this check came in from the insurance company, payable to you and Mrs. John Steinbach, you endorsed it all over to her, did you?

A. Yes, sir.

Q. Because she had put up the money?

A. Yes, sir.

Q. And you had not, is that right?

A. That is right, yes, sir.

[51] Q. So, you did not lend any money to your husband on this dredge deal at all, did you?

A. No.

Q. Or to anybody else?

A. No.

MR. SNOW: I think that is all, Mrs. Steinbach.

CROSS EXAMINATION

[51] BY MR. WINSLOW:

Q. You knew from the talks in the family at the time the dredge was purchased that the dredge was being placed in the names of you ladies, that is, as between you four, did you not? You knew it was being purchased in the names of the ladies and that the insurance was taken out in the names of the ladies?

MR. SNOW: The same objection to that as heretofore made.

A. Yes.

MR. WINSLOW: That is all.

